

# **Notice of Allowability**

Application No.

09/250,055

Examiner

Susan Ungar

Applicant(s)

MARKS ET AL.

Art Unit

1542

**- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- 1 ☐ This communication is responsive to Amendments filed 7/10/06, 9/22/06, 12/5/06, 2/12/07.
- 2 ☐ The allowed claim(s) is/are 1, 3-5, 14-15, 34-40, 43-44, 53-59, now renumbered 1-32, respectively.
- 3 ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the
    - 1 ☐ Certified copies of the priority documents have been received
    - 2 ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
    - 3 ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received \_\_\_\_\_

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

- 4 ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  - 5 ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-946) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_
- Identifying indicia such as the application number (see 37 CFR 1.54(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
- 6 ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- 1 ☐ Notice of References Cited (PTO-892)
- 2 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3 ☐ Information Disclosure Statements (PTO/SB/08)  
Paper No./Mail Date \_\_\_\_\_
- 4 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5 ☐ Notice of Informal Patent Application
- 6 ☐ Interview Summary (PTO-413)  
Paper No./Mail Date \_\_\_\_\_
- 7 ☒ Examiner's Amendment/Comment
- 8 ☐ Examiner's Statement of Reasons for Allowance
- 9 ☐ Other \_\_\_\_\_

Susan Ungar  
Primary Examiner  
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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submissions filed on July 10, 2006, September 22, 2006, December 5, 2006 and February 12, 2007 are acknowledged and have been entered.

Claims 68 and 69 have been added and claims 1 and 67-69 have been amended.

Claims 1, 3-5, 14-15, 34-40, 43-44, 53-69 are pending. An action on the RCE follows.

2. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

3. It is specifically noted that the substitute paper copy of the sequence listing and CRF submitted December 5, 2006 correcting a typographical error in the nucleotide sequence of F5 (SEQ ID NO:3) and the corresponding polypeptide sequence (SEQ ID NO:1) have been entered. Applicant has clearly

demonstrated the differences between the instant fact pattern and the fact pattern disclosed in *Ex parte Maizel*. The substitute sequence listing is not new matter because Applicant has clearly demonstrated the unbroken chain of possession of the claimed molecule from the time of filing to the present, the typographical error is clearly inadvertent and the correction of the typographical error is proper in order to assure that the patent teaches the correct sequence information for the F5 antibody.

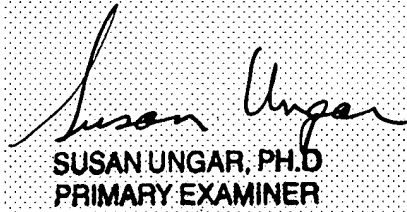
4. Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (703) 305-2181. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Ungar, PhD whose telephone number is (571) 272-0837. The examiner can normally be reached on Monday through Friday from 7:30am to 4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley, can be reached at 571-272-0898. The fax phone number for this Art Unit is (571) 273-8300.



SUSAN UNGAR, PH.D  
PRIMARY EXAMINER

February 19, 2007